
(1997) 09 AP CK 0064

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 642 and 784 of 1994

Devarapathi Pattabhi Ramaiah

APPELLANT

Vs

Daruhiri Lakshmi Presanna and Another

RESPONDENT

Date of Decision : 03-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3A, 151

Citation : (1998) 2 ALD 783 : (1997) 6 ALT 475

Hon'ble Judges : Lingaraja Rath, J;J. Chelameswar, J

Bench : Division Bench

Advocate : Mr. T. Sunil Chowdary, for the Appellant; Mr. N.V. Suryanarayana Murthy, for the Respondent

Judgement

J. Chelameswar, J

1. The present Civil Revision Petition arises out of an order passed in I.A.No. 190 of 1994 in Original Suit No. 16 of 1989 on the file of the Subordinate Judge, Ramachandrapuram, dated 10-2-1994.

2. The respondents in the revision-pelition filed a suit against the petitioner herein in Original Suit No. 16 of 1989 for declaration of their title and for possession and other reliefs in respect of the suit schedule properties presumably on the basis of a will (the facts are not very clear from the record). Trial of the suit commenced. Some witnesses on behalf of the plaintiffs were examined. The second plaintiff filed a petition in I.A.No. 190 of 1994 under Order 18 Rule 3A read with Section 151 of the CPC praying that she may be permitted to examine herself as a witness. The said application was opposed by the petitioner herein. However, the learned Subordinate Judge by his Order dated 10-2-1994 allowed the said I.A., questioning the said order, the present Civil Revision Petition came to be filed. While the matter was being heard by a learned single Judge of this Court it appears that it was reported to the teamed single Judge that another Civil Revision Petition No. 825 of 1994 involving similar question had been referred to a Division Bench. Therefore, the learned single Judge referred the

matter to Division Bench.

3. When we actually examined C.R.P.No.825 of 1994 we found that it was decided on a limited issue holding that the affidavit filed in support of the Order 18 Rule 3A of the CPC application did not disclose sufficient reasons to enable the Court to record its satisfaction to permit the petition to be ordered. In view of the fact that the matter raises a question of law and having regard to the fact that the question involved in this matter is likely to be raised all over the State frequently, notwithstanding the fact that there was no proper reference order we decided to proceed with hearing of these two matters.

4. The learned Counsel for the petitioner made two submissions. The first submission is that in view of the provisions of Order 18 Rule 3A of the Code of Civil Procedure, the trial Court lacked jurisdiction to permit the respondent/ plaintiff to examine herself as a witness after some witnesses were examined on her behalf. He vehemently contended that any such permission ought to have been sought for by the respondent/ plaintiff before any other witness on behalf of the plaintiff was examined. The plaintiffs having failed to obtain permission prior to the commencement of the examination of the witnesses on their side cannot seek such permission at a belated stage and the lower Court lacked jurisdiction to accord such permission in view of the above mentioned provision and further that the said provision was mandatory which calls for strict compliance.

5. The second submission is that assuming that permission contemplated under Rule 3A of the CPC can be accorded at any stage of the trial, on the facts of the present case there is no justifiable reason for the Court to record signifying its satisfaction to permit such a belated application.

6. Number of decisions were cited at the Bar. Before we proceed to examine these authorities, it would be more appropriate to analyse the language of Order 18 Rule 3A of the CPC which reads as follows :

"Order 18 Rule 3A: Party to appear before other witnesses : Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage."

7. A reading of the above rule shows that it is in two parts, the first part of the rule creates a mandatory obligation on the litigant to examine himself as a witness before any other witness on his behalf is examined. If the rule were to end there, would have been no scope perhaps to interpret the rule except follow the letter of the rule. But the latter half of the rule provides power to the Court to permit deviation from the general principle enshrined in the first part and accord permission to the litigant for reasons to be recorded by the Court. As far as the second part is concerned, the rule is not very definite as to the point of time at which such permission can be accorded.

8. The learned Counsel for the petitioner relied on two decisions in support of his arguments. The first is Ayyasami Gounder and others Vs. T.S. Palanisami Gounder, , no doubt took the view that departure from the rule contained in the first part of the rule is not permissible and any such departure would defeat the object of the rule which was introduced into the CPC by an amendment in 1976.

9. As against this decision, the respondents relied on Maguni Dei Vs. Gouranga Sahu and Others, , Kwality Restaurant, Amritsar Vs. Satinder Khanna, , Bholanath Mondal and Others Vs. Kalipada Mondal, , Pravesh Kumari and Others Vs. Rishi Prasad and Others, , Swami Hari Harananda Giri Vs. Yogoda Satsangha Society of India and Others, and Kondaveeti Pranchis Vs. Mallarapu Lurdamma, whereunder it was held that the Rule 3A of the CPC is not an inflexible one and Court can permit a party to make an application at any stage of the trial and permit the party to examine himself as a witness notwithstanding the fact that such permission was not obtained prior to the commencement of the examination of the witnesses for that particular party.

10. The petitioner further relied on a judgment of this Honourable Court reported in Chava Seethamma and Others Vs. Kolaguntla Malakonda Reddy and Another, . The learned single Judge in the said matter took the following view:

"When the evidence of the plaintiffs was over, it was open to Defendants 1 and 2 in that order to figure as witnesses. If defendant 3 wants to give evidence in the first instance as DW1, he must necessarily obtain permission of the Court. It is obligatory on the part of the Court to state reasons for according such a permission. Evidently this procedure is intended to advance the cause of justice, where there are more than one defendant, in the order, in which the defendants are arrayed, they should give evidence, otherwise there is every likelihood of gaps in the evidence being filled up. Same reasoning applies if there are more than one plaintiff. If the procedure as contemplated under Rule 3A of Order 18 of the Code is not adhered to, there is every likelihood of the parties insisting upon, at every stage, the Court to grant permission to lead rebuttal evidence.""

With great respect we must say that we are not able to agree with the view taken by the learned single Judge, Order 1 Rule 3 of the CPC prescribes as to who may be joined as defendants but nowhere the CPC prescribes as to in what order the defendants ought to be arrayed. That being the position it is open to the plaintiff to choose the order of the array of the defendants. If the logic of the learned single Judge is to be accepted, the examination of the defendants in the order as they are shown in the plaint would be a matter dependent not on any principle of law or logic but purely on a chance of the choice of the plaintiff. We are not able to believe that the law makers intended such a result. Rule 3A of the CPC was introduced by Act 104 of 1976 into the Code of Civil Procedure. Pursuant to the recommendations of the Law Commission in the 54th report with an intention to prevent the notorious practice indulged in by litigants in examining other witnesses first and later covering up the gaps by the examination of the parties themselves later, to substantiate their case. If that is

the mischief sought to be remedied by the amended Rule 3A of Order 18 of the Code of Civil Procedure, the order of the examination of such of the defendants who wish to examine themselves as witnesses in support of their defence cannot be left to the choice of the plaintiff. The defendants are entitled to put forward the best defence available to them. In putting forward such defence it is for them to decide as to which one of the defendants should be examined first as a witness to effectively defend the case. That right cannot be made subject to the arbitrary or even a designed choice of the plaintiff. No doubt as against other witnesses whom the defendants wish to examine in support of their case the defendants must get themselves examined first unless the Court permits otherwise. At any rate, this judgment in our view does not advance the case of the petitioner.

11. Number of judgments relied upon by the respondents" Counsel referred to above hold the view that there is no inflexible rule as to the point of time at which the permission of the Court can be accorded under Rule 3A of Order 18 of the Code of Civil Procedure, (sic) The safeguard against the abuse of the process is that the Court while according permission to depart from the general rule enshrined under Rule 3A of the CPC is required to record reasons and goes without saying that such reasons must be cogent and germane to the issue. Once the reasons are recorded, they are open to scrutiny by the appellate Courts.

12. In view of the abovementioned reasons, we have no hesitation to reject the first submission made by the learned Counsel for the petitioner.

13. Coming to the second submission, that the reasons given by the respondent plaintiff in her affidavit filed in support of the I. A., are not sufficient to enable the Court to record its satisfaction as contemplated under Rule 3A of the CPC deserves consideration. The material allegation in this behalf in the affidavit are as follows :

"We are relying upon the will dated 4-6-1969 (Ex.A2) and Codicil dated 20-10-1975 executed by Late Atchayamma under the Codicil, late Atchayamma bequeathed the plaint schedule properties, in our favour. Our father is well acquainted with the facts of the case and so he is looking after the above suit on our behalf. As any how our father is to be examined on our behalf to speak to the facts in detail, we bona fide felt that our evidence would only be a mere repetition of what our father is to depose and so did not get ourselves examined earlier. While my father was giving evidence as PW1, he was cross-examined on behalf of the defendant as he is going to examine us or not. My father staled that he may or may not examine us. But, we are now advised to give evidence in order to avoid any comment by the defendant. As I have already examined some witnesses, I pray that in view of the above circumstances, I may be permitted to get myself examined in the above suit. It is therefore, just and necessary in the interests of justice that the Hon"ble Court may be pleased to permit me to get myself examined in the above suit. Else, myself and the 1st petitioner will be put to serious loss."

A mere reading of the above pleadings show that the petitioner is clearly intending to fill up the gaps left by the oilier witnesses examined on her behalf. This is precisely what the Code does not permit and only to prevent this mischief the CPC is amended by introducing Rule 3A of the Code of Civil Procedure. The learned Counsel for the respondents has not given the satisfactory explanation in this regard. We, therefore accept the second submission made by the learned Counsel for the petitioner and therefore allow the revision-petition.

C.R.P.No.784 of 1994 :

14. Coming to C.R.P.No.784 of 1994, it arises out of I. ANo.304 of 1989 in O.S.No.4 of 1990 on the file of the Subordinate Judge, Ramchandrapuram u/s 151 of the CPC praying that O.S.No.4 of 1990 should be tried along with O.S.No. 16 of 1989 as both the matters are interconnected as common questions would arise in both the suits. Allowing the said I. A., the learned trial Judge held that "the result of the both the suits purely dependent upon the finding on Ex. A2 will" which finding is not assailed by the petitioner in this Civil Revision Petition. If the result of the suits depends on proof, assessment and interpretation of the same documents, we are of the view that the matters must be tried jointly to avoid any conflicting decisions, coming out of substantially the same set of facts. The petitioner could not show as to how ordering joint order in both the suits would prejudicially effect his interest or result in the miscarriage of justice.

15. For the above said reasons, we see no merits in the Civil Revision Petition and the same is accordingly dismissed. No costs.